

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6707 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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G S R T C

Versus

SHASHIKANT V JOSHI

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Appearance:

None present for Petitioners

MR JJ YAJNIK for Respondent No. 1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/09/96

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner. Shri J.J. Yagnik, learned counsel for the respondent contended that this Special Civil Application is also not maintainable in view of the latest decision of apex Court reported in AIR 1996 SC 1209. Shri Yagnik further contended that challenge has been made by the petitioner in this Special Civil Application to the judgment of Assistant Judge, in Regular Civil Appeal No.186 of 1984 against which second appeal u/s.100 of Civil Procedure Code, 1908, is the only remedy and not this Special Civil Application.

2. I have gone through the impugned judgment of Assistant Judge, Junagadh, and I am satisfied that the contention of the respondent deserves acceptance. The Apex Court had held in the aforesaid case that the orders made in civil suits are not questionable before this Court by way of writ petition as sufficient remedy is provided in Civil Procedure Code, 1908. In this case,

the suit of the respondent has been decreed by the Court below and that decree has been challenged by the petitioner before the first appellate Court and that appeal has been dismissed. The learned counsel for the respondent is correct to say that against this judgment and decree of the appellate Court, only second appeal was the remedy and not this Special Civil Application.

3. In the result, this Special Civil Application is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)